

§ 708.6

(1) A substantial violation of a law, rule, or regulation;

(2) A substantial and specific danger to employees or to public health or safety; or

(3) Fraud, gross mismanagement, gross waste of funds, or abuse of authority; or

(b) Participating in a Congressional proceeding or an administrative proceeding conducted under this part; or

(c) Subject to § 708.7 of this subpart, refusing to participate in an activity, policy, or practice if you believe participation would—

(1) Constitute a violation of a federal health or safety law; or

(2) Cause you to have a reasonable fear of serious injury to yourself, other employees, or members of the public.

[57 FR 7541, Mar. 3, 1992, as amended at 65 FR 6319, Feb. 9, 2000]

§ 708.6 What constitutes “a reasonable fear of serious injury?”

Participation in an activity, policy, or practice may cause an employee to have a reasonable fear of serious injury that justifies a refusal to participate if:

(a) A reasonable person, under the circumstances that confronted the employee, would conclude there is a substantial risk of a serious accident, injury, or impairment of health or safety resulting from participation in the activity, policy, or practice; or

(b) An employee, because of the nature of his or her employment responsibilities, does not have the training or skills needed to participate safely in the activity or practice.

[57 FR 7541, Mar. 3, 1992, as amended at 65 FR 6319, Feb. 9, 2000]

§ 708.7 What must an employee do before filing a complaint based on retaliation for refusal to participate?

You may file a complaint for retaliation for refusing to participate in an activity, policy, or practice only if:

(a) Before refusing to participate in the activity, policy, or practice, you asked your employer to correct the violation or remove the danger, and your employer refused to take such action; and

(b) By the 30th day after you refused to participate, you reported the violation or dangerous activity, policy, or

10 CFR Ch. III (1–14 Edition)

practice to a DOE official, a member of Congress, another government official with responsibility for the oversight of the conduct of operations at the DOE site, your employer, or any higher tier contractor, and stated your reasons for refusing to participate.

§ 708.8 Does this part apply to pending cases?

The procedures in this part apply prospectively in any complaint proceeding pending on the effective date of this part.

§ 708.9 When is a complaint or other document considered to be “filed” under this part?

Under this part, a complaint or other document is considered “filed” on the date it is mailed or on the date it is personally delivered to the specified official or office.

Subpart B—Employee Complaint Resolution Process

§ 708.10 Where does an employee file a complaint?

(a) If you were employed by a contractor whose contract is handled by a contracting officer located in DOE Headquarters when the alleged retaliation occurred, you must file two copies of your written complaint with the EC Director.

(b) If you were employed by a contractor at a DOE field facility or site when the alleged retaliation occurred, you must file two copies of your written complaint with the Head of Field Element at the DOE field element with jurisdiction over the contract.

§ 708.11 Will an employee’s identity be kept confidential if the employee so requests?

No. The identity of an employee who files a complaint under this part appears on the complaint. A copy of the complaint is provided to the contractor and it becomes a public document.

§ 708.12 What information must an employee include in a complaint?

Your complaint does not need to be in any specific form but must be signed by you and contain the following:

Department of Energy

§ 708.15

(a) A statement specifically describing

(1) The alleged retaliation taken against you and

(2) The disclosure, participation, or refusal that you believe gave rise to the retaliation;

(b) A statement that you are not currently pursuing a remedy under State or other applicable law, as described in § 708.15 of this subpart;

(c) A statement that all of the facts that you have included in your complaint are true and correct to the best of your knowledge and belief; and

(d) An affirmation, as described in § 708.13 of this subpart, that you have exhausted (completed) all applicable grievance or arbitration procedures.

§ 708.13 What must an employee do to show that all grievance-arbitration procedures have been exhausted?

(a) To show that you have exhausted all applicable grievance-arbitration procedures, you must:

(1) State that all available opportunities for resolution through an applicable grievance-arbitration procedure have been exhausted, and provide the date on which the grievance-arbitration procedure was terminated and the reasons for termination; or

(2) State that you filed a grievance under applicable grievance-arbitration procedures, but more than 150 days have passed and a final decision on it has not been issued, and provide the date that you filed your grievance; or

(3) State that your employer has established no grievance-arbitration procedures.

(b) If you do not provide the information specified in § 708.13(a), your complaint may be dismissed for lack of jurisdiction as provided in § 708.17 of this subpart.

§ 708.14 How much time does an employee have to file a complaint?

(a) You must file your complaint by the 90th day after the date you knew, or reasonably should have known, of the alleged retaliation.

(b) The period for filing a complaint does not include time spent attempting to resolve the dispute through an internal company grievance-arbitration procedure. The time period for filing stops

running on the day the internal grievance is filed and begins to run again on the earlier of:

(1) The day after such dispute resolution efforts end; or

(2) 150 days after the internal grievance was filed if a final decision on the grievance has not been issued.

(c) The period for filing a complaint does not include time spent resolving jurisdictional issues related to a complaint you file under State or other applicable law. The time period for filing stops running on the date the complaint under State or other applicable law is filed and begins to run again the day after a final decision on the jurisdictional issues is issued.

(d) If you do not file your complaint during the 90-day period, the Head of Field Element or EC Director (as applicable) will give you an opportunity to show any good reason you may have for not filing within that period, and that official may, in his or her discretion, accept your complaint for processing.

§ 708.15 What happens if an employee files a complaint under this part and also pursues a remedy under State or other law?

(a) You may not file a complaint under this part if, with respect to the same facts, you choose to pursue a remedy under State or other applicable law, including final and binding grievance-arbitration procedures, unless:

(1) Your complaint under State or other applicable law is dismissed for lack of jurisdiction;

(2) Your complaint was filed under 48 CFR part 3, Subpart 3.9 and the Inspector General, after conducting an initial inquiry, determines not to pursue it; or

(3) You have exhausted grievance-arbitration procedures pursuant to § 708.13, and issues related to alleged retaliation for conduct protected under § 708.5 remain.

(b) Pursuing a remedy other than final and binding grievance-arbitration procedures does not prevent you from filing a complaint under this part.

(c) You are considered to have filed a complaint under State or other applicable law if you file a complaint, or other pleading, with respect to the same facts in a proceeding established